

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

SEATTLE IRON & METALS CORP.,

Defendant.

Case No. 12-01201 RSM

FIRST AMENDED JOINT STIPULATED  
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties and interested non-parties The Shalmar Group LLC, Shalmar 08 LLC, 730 Myrtle LLC, and Seattle Iron and Metals Export, Inc. hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties and interested non-parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle the parties or non-parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- a. Seattle Iron & Metals Corporation and Subsidiaries Consolidated Financial Statements;
- b. The Shalmar Group LLC’s summary of yearly income and profit;
- c. Shalmar 08 LLC’s summary of yearly income and profit;
- d. 730 Myrtle LLC’s summary of yearly income and profit; and
- e. Seattle Iron and Metals Export, Inc.’s summary of yearly income and profit.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

1           4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party or non-party, a receiving  
3 party may disclose any confidential material only to:

4                   (a)     the receiving party’s counsel of record in this action, as well as counsel  
5 of record’s legal assistant to whom it is reasonably necessary to disclose the information for  
6 this litigation;

7                   (b)     the Executive Director of the receiving party to whom disclosure is  
8 reasonably necessary for this litigation, however, disclosure shall be limited to references to the  
9 financial statements in unredacted expert reports (including drafts), unredacted pleadings  
10 (including drafts) and attorney settlement memoranda citing the financial statements and/or  
11 summaries of yearly profit and income. The Executive Director shall not review the financial  
12 statements and/or summaries of yearly profit and income themselves nor make any notes  
13 regarding the contents of the financial statements and/or summaries of yearly profit and income  
14 based on references in the unredacted expert reports, unredacted pleadings, and attorney  
15 settlement memoranda;

16                  (c)     the receiving party’s economist expert to whom disclosure is reasonably  
17 necessary for this litigation and who has signed the “Acknowledgment and Agreement to Be  
18 Bound” (Exhibit A);

19                  (d)     the court, court personnel, and court reporters and their staff;

20                  (e)     during their depositions, economist experts who have signed the  
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
22 designating party or non-party or ordered by the court. Pages of transcribed deposition  
23 testimony or exhibits to depositions that reveal confidential material must be separately bound  
24 by the court reporter and may not be disclosed to anyone except as permitted under this  
25 agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party or non-party to determine whether the designating party or non-party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party or non-party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party or non-party to sanctions.

If it comes to a designating party's or non-party's attention that information or items that it designated for protection do not qualify for protection, the designating party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or

ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party or non-party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party or non-party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party or non-party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party or non-party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s or non-party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1           6.1    Timing of Challenges. Any party or non-party may challenge a designation of  
2 confidentiality at any time. Unless a prompt challenge to a designating party's or non-party's  
3 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
4 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does  
5 not waive its right to challenge a confidentiality designation by electing not to mount a  
6 challenge promptly after the original designation is disclosed.

7           6.2    Meet and Confer. The parties and/or non-parties must make every attempt to  
8 resolve any dispute regarding confidential designations without court involvement. Any motion  
9 regarding confidential designations or for a protective order must include a certification, in the  
10 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and  
11 confer conference with other affected parties and/or non-parties in an effort to resolve the  
12 dispute without court action. The certification must list the date, manner, and participants to the  
13 conference. A good faith effort to confer requires a face-to-face meeting or a telephone  
14 conference.

15           6.3    Judicial Intervention. If the parties and/or non-parties cannot resolve a challenge  
16 without court intervention, the designating party or non-party may file and serve a motion to  
17 retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g),  
18 if applicable). The burden of persuasion in any such motion shall be on the designating party  
19 or non-party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or  
20 impose unnecessary expenses and burdens on other parties) may expose the challenging party  
21 to sanctions. All parties shall continue to maintain the material in question as confidential until  
22 the court rules on the challenge.

23   7.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
24 LITIGATION

1 If a party is served with a subpoena or a court order issued in other litigation that  
2 compels disclosure of any information or items designated in this action as  
3 “CONFIDENTIAL,” that party must:

4 (a) promptly notify the designating party or non-party in writing and include  
5 a copy of the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to  
7 issue in the other litigation that some or all of the material covered by the subpoena or order is  
8 subject to this agreement. Such notification shall include a copy of this agreement; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued  
10 by the designating party or non-party whose confidential material may be affected.

11 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
13 confidential material to any person or in any circumstance not authorized under this agreement,  
14 the receiving party must immediately (a) notify in writing the designating party or non-party of  
15 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
16 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
17 made of all the terms of this agreement, and (d) request that such person or persons execute the  
18 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

19 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
20 MATERIAL

21 When a producing party or non-party gives notice to receiving parties that certain  
22 inadvertently produced material is subject to a claim of privilege or other protection, the  
23 obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure  
24 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established  
25 in an e-discovery order or agreement that provides for production without prior privilege  
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1 review. The parties and non-parties agree to the entry of a non-waiver order under Fed. R. Evid.  
2 502(d) as set forth herein.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving  
5 party must return all confidential material to the producing party or non-party, including all  
6 copies, extracts and summaries thereof. Alternatively, the parties and non-parties may agree  
7 upon appropriate methods of destruction.

8 The confidentiality obligations imposed by this agreement shall remain in effect until a  
9 designating party or non-party agrees otherwise in writing or a court orders otherwise.

10  
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12  
13 DATED: September 17, 2018

/s/ Claire E. Tonry, WSBA #44497  
Attorney for Plaintiff

14  
15 DATED: September 17, 2018

/s/ Stephen R. Parkinson, WSBA #21111  
Attorneys for Defendant

16  
17 DATED: September 17, 2018

/s/ Geoff Bridgman, WSBA #25242  
Attorneys for Non-Party Entities The  
Shalmar Group LLC, Shalmar 08 LLC,  
730 Myrtle LLC, and Seattle Iron and  
Metals Export, Inc.

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22 PURSUANT TO STIPULATION, IT IS SO ORDERED

23 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
24 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
25 proceeding in any other court, constitute a waiver by the producing party of any privilege  
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1 applicable to those documents, including the attorney-client privilege, attorney work-product  
2 protection, or any other privilege or protection recognized by law.  
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4 DATED: September 18, 2018  
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7 RICARDO S. MARTINEZ  
8 CHIEF UNITED STATES DISTRICT JUDGE  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty  
5 of perjury that I have read in its entirety and understand the First Amended Stipulated Protective  
6 Order that was issued by the United States District Court for the Western District of Washington  
7 on [date] in the case of Puget Soundkeeper Alliance v. Seattle Iron & Metals, Corp., Case No.  
8 2:12-cv-01201-RSM. I agree to comply with and to be bound by all the terms of this First  
9 Amended Stipulated Protective Order and I understand and acknowledge that failure to so  
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
11 promise that I will not disclose in any manner any information or item that is subject to this  
12 First Amended Stipulated Protective Order to any person or entity except in strict compliance  
13 with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this First Amended  
16 Stipulated Protective Order, even if such enforcement proceedings occur after termination of  
17 this action.

18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

21 Signature: \_\_\_\_\_